

STATE OF MICHIGAN  
COURT OF APPEALS

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DELANO PARKER,

Plaintiff-Appellant,

v

JOHNSON KENNEDY III,

Defendant-Appellee.

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UNPUBLISHED

April 21, 2011

No. 296821

Genesee Circuit Court

LC No. 09-091181-NO

Before: SERVITTO, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant under MCR 2.116(C)(10). We affirm.

This case arises out of injuries sustained by plaintiff when he stepped on a stair tread that subsequently collapsed. The incident occurred at a residential house owed by defendant and leased to plaintiff's cousin. On one of his visits with his cousin, plaintiff walked down the staircase leading to the basement. As he walked down the stairs, "the steps collapsed." Specifically, as he stepped on the fifth stair tread from the top, it broke in half. Plaintiff caught his balance and took another step down, and that stair tread also broke. As a result, plaintiff tumbled down the remaining six to seven steps of the staircase and sustained injuries.

Plaintiff argues that trial court erred in granting summary disposition in favor of defendant because there was an issue of material fact regarding whether defendant had actual or constructive notice of the alleged dangerous condition on the stair treads. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). Summary disposition "is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

"To establish a prima facie case of negligence, a plaintiff must prove: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Kosmalski v St John's*

*Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004). An invitor “has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to . . . inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards.” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000).

The parties do not dispute plaintiff’s status as an invitee on defendant’s premises. Accordingly, an invitor is liable for injury resulting from an unsafe condition caused by his active negligence or, if otherwise caused, where known to the invitor or is of such a character or has existed a sufficient length of time that he should have had knowledge of it. *Hampton v Waste Mgmt of Mich, Inc.*, 236 Mich App 598, 604; 601 NW2d 172 (1999). Here, there is no evidence in the record that would establish that defendant caused the dangerous condition to exist on the stair treads or caused the stair treads to collapse when plaintiff stepped on them. However, plaintiff argues that defendant had actual or constructive notice of a dangerous condition on the stair treads.

There is no evidence that defendant had actual notice of a dangerous condition on the stair treads. Plaintiff alleged that the dangerous condition that caused his injury existed on the stair treads. Plaintiff specifically denies that the wobbling staircase caused his injury. While plaintiff notified defendant that the staircase was not securely attached to the foundation wall causing the staircase to wobble, he did not notify defendant of any alleged dangerous condition on the stair treads. Thus, while defendant had actual notice that the staircase was not properly attached to the foundation, he did not have actual notice of a dangerous condition on the stair treads that caused plaintiff’s injury.

With respect to constructive notice, we conclude that plaintiff failed to produce evidence from which a reasonable inference of constructive notice of the dangerous condition on the stair treads could be made. Constructive notice may arise not only from the passage of time itself, but also from the type of condition involved, or from a combination of the two elements. *Banks v Exxon Mobil Corp*, 477 Mich 983, 983; 725 NW2d 455 (2007); *Kroll v Katz*, 374 Mich 364, 372; 132 NW2d 27 (1965). Generally, the question of whether a defect has existed a sufficient length of time and under circumstances that the defendant is deemed to have notice is a question of fact, and not a question of law. *Banks*, 477 Mich at 984; *Kroll*, 374 Mich at 371. However, where no evidence is presented to show that the defect had existed for a considerable time, the defendant is entitled to judgment in his favor. *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8; 279 NW2d 318 (1979).

Plaintiff argues that he notified defendant of the wobbling staircase, and that if defendant had inspected and repaired the wobbling staircase, a cursory inspection would have revealed the dangerous condition on the stair treads. However, the evidence on the record does not support plaintiff’s contention. Plaintiff stated that he inspected the stairs and only noticed that the staircase was not attached to the foundation wall. There was no evidence that the stair treads were cracked, weak, or vulnerable. There was no evidence concerning the reason the stair treads failed. Further, no evidence was produced by plaintiff that the alleged condition had existed for any period of time before the incident. There was also no evidence that, had defendant inspected or repaired the wobbling staircase, by properly securing the staircase to the foundation, this inspection or reparation would have revealed the dangerous condition on the stair treads.

A party opposing a motion for summary dismissal must present more than conjecture and speculation to establish a genuine issue of material fact exists. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). Plaintiff failed to present sufficient evidence from which it could be inferred that, either because of its character or the duration that it existed, defendant had actual or constructive notice of the alleged dangerous condition on the stair treads. Therefore, we hold that the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Deborah A. Servitto

/s/ Joel P. Hoekstra

/s/ Donald S. Owens